

**March 30, 2006**  
**State Employee Mediation Program**  
**Request for Proposal Bidder's Conference**  
**Questions & Answers**

- Q. What were the successful contract rates from past bidders?
- A. **Northern - \$95.00, 115.00, 125.00**  
**Central – \$100.00, \$150.00**  
**Southern - \$100.00, \$110.00, \$150.00**
- Q. How are bids processed and what time frames?
- A. **First, we check if the package was received on or before the due date and time and if it has all the required attachments as indicated on page 22 of the RFP. Please refer to page 18 of the RFP for the evaluation process. The time frames or key action dates for this RFP are shown on page 12 of the RFP.**
- Q. How many Requests for Proposals were previously received?
- A. **The last Request for Proposal was issued in 2004.**
- Q. Are past bids available?
- A. **Yes**
- Q. What is the process to view past bids?
- A. **You may request an appointment from Flor Ligaya (916) 653-1823 to look at past bids. If you request for copies of some pages of past bids, there will be a charge of ten cents per page.**
- Q. How long are the bid records kept?
- A. **Depending on the term of the contract, we retain the contracts, bids, and RFP for three years after the last invoice is paid. For example, if the term of the contract/RFP is three (3) years and the last invoice was paid in the year immediately following the last year of the contract, the contract, bids, and RFP would technically be retained for another three (3) years after last payment. Retention period would then be for a total of seven (7) years**
- Q. If we request copies of the bids, can we get the copies today?
- A. **No. You may request an appointment from Flor Ligaya (916) 653-1823 to look at past bids. If you request for copies of some pages of past bids, there will be a charge of ten cents per page.**

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- Q. Can the bid be walked-in and handed to the security guard?
- A. **If you hand-deliver it, you have to go through the security guard on the first floor lobby. Ask the security guard to let you in to the mailroom and hand-deliver your bid to the mailroom staff so your bids could be date and time stamped as soon as mailroom receives your bid.**
- Q. Is there a sliding scale of points based on the dollar amount of the bid?
- A. **All the bid amounts are reviewed and those greater than 125% of the average of all bids are eliminated. Remaining bids are ranked and a sliding point value is allocated.**
- Q. How does the consulting work?
- A. **The MSP would provide consulting services as requested directly to SEMP Staff. The MSP will not be consulting with disputants or other departmental representatives. The consulting mainly entails feedback on program improvement, expansion and/or enhancement.**
- Q. Do you have history on the Mediation program?
- A. **Yes. We can provide you a copy of the September 17, 1998, State Employee Mediation Program, Report on Phase II.**
- Q. Will you consider additional attachments to the proposal?
- A. **No. The rating criteria are based on the elements specifically requested in the RFP.**
- Q. What number of contracts will be awarded?
- A. **It varies depending on the number of successful bids. Last cycle 2-3 bidders were awarded in each region.**
- Q. Can you guarantee the number of cases for bidders each year?
- A. **No.**
- Q. How do we get an electronic version of the bid?
- A. **Send a request for a copy to [www.mediation@spb.ca.gov](mailto:www.mediation@spb.ca.gov)**

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Q. If we use the electronic version, does it matter about the page number changes?

A. **No.**

Q. Do our answers have to fit in the space provided on the hard copy of the RFP?

A. **No. You may request an electronic version to accommodate a need for more space.**

Q. When do we meet with the co-mediator?

A. **Typically you will meet the co-mediator prior to the mediation. We recommend a pre-mediation meeting about a ½ hour prior to the session where co-mediator roles are defined. We also suggest debriefing with the co-mediator immediately after the session.**

Q. Is this time meeting with the co-mediators paid time?

A. **Yes**

Q. Do you have an idea of the number of bids per region?

A. **There were 25 bidders for the Northern Region, 13 bidders for the Southern Region, and 12 bidders for the Central Region.**

Q. Can you submit separate cost bids for the various mediation activities?

A. **No.**

Q. What issues are MSP's providing to SEMP in terms of consultations?

A. **They vary. One example is the trend of employees to file workplace violence complaints in order to get their issues addressed even though the situation isn't typically volatile enough to justify a workplace violence complaint.**

Q. Do you pay for travel time?

A. **Travel time is reimbursed at a rate of \$50 per hour (not to exceed 8 hours per any 24-hour period), if the mediation is at least 50 miles from your headquarters or place of business. When on overnight travel status, arrival at accommodations is considered the destination.**

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- Q. Do you pay the MSP's to promote the program?
- A. **We have in the past, but most likely the MSP will not do program promotion. The intent is to mainly utilize the MSPs' for mediations.**
- Q. What are the terms of reimbursement?
- A. **If you are a certified small business, we are required to pay you in 45 days. If we fail to pay a certified small business in 45 days, we will pay you interest.**
- Q. Can I use references related to contract work I have previously performed for SEMP to verify the work I have done?
- A. **Yes**
- Q. Would it be reasonable to bid for all three Regions, if it would not be cost effective to send someone down from the Northern Regions to the Southern Region?
- A. **It depends. It may be cost effective depending on the bid amount. We may also assign cases outside the MSP's headquartered region based on need due to limited availability of in-region MSP's; urgency of the mediation request; as well as special expertise.**
- Q. Can you tell me what the averaged hourly rate was for contractor/mediators in SEMP for 2004/2005? For 2002/2003?
- A. **For 2004/05 the average hourly rate is \$118.00.  
For 2002/03 the average hourly rate was \$112.50.**
- Q. As a sole proprietor can supplying one's social security number satisfy Item 7 in Attachment II?
- A. **Yes**
- Q. Although the minimum number of mediation cases required is 50 cases (10 cases in the employment context), how are cases in excess of 50 rated by % (i.e. how is the 45-point value distributed in relation to number of cases mediated).

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- A. **This will vary based on the experience of the bidders. For the last cycle, points were awarded for the number of cases mediated as follows:**

<b>1500 or more</b>	<b>20 points</b>
<b>1300-1499</b>	<b>18 points</b>
<b>1100-1299</b>	<b>16 points</b>
<b>900-1099</b>	<b>14 points</b>
<b>700-899</b>	<b>12 points</b>
<b>500-699</b>	<b>10 points</b>
<b>300-499</b>	<b>8 points</b>
<b>100-299</b>	<b>6 points</b>
<b>20-99</b>	<b>4 points</b>

- Q. Is an organization/individual currently providing these (mediation) services?
- A. **Yes. The July 6, 2004, Request for Proposal Bid was awarded to Lawrence D. Hoover, Francine D. Schlaks, PhD., J.D., a Matter of Mediation, Inc., Alicia Andersen, California Communication Services, and Gina Rae Hendrickson, Accord Mediation Services.**
- Q. What is the current number of unresolved cases?
- A. **This Fiscal Year we accepted 93 cases for mediation, thus far and of these cases 10 have not yet been mediated and one did not reach an agreement.**
- Q. What is the annual number of new cases?
- A. **There are currently 93 new cases this fiscal year. The previous three fiscal year's average number of cases is 135.**
- Q. What is the anticipated annual number of cases, which settle using current ADR and Mediation protocols?
- A. **There is an anticipated average of 78 cases which settle using the SEMP.**
- Q. What is the estimated number of cases anticipated to use, or otherwise be eligible for mediation from May 2006 through May 2009?
- A. **Based on the three previous fiscal year's cases, we estimated average of about 135 cases a year. Bringing the estimated total number of cases for May 2006 – May 2009, to about 405.**

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- Q. What is the number of cases, which are processed under current Collective Bargaining Agreements, as opposed to cases, which have no union structure?
- A. **ZERO. Most of the employees utilizing the SEMP are covered by Collective Bargaining Agreements. However, we do not mediate issues subject to collective bargaining.**
- Q. Approximately how many mediation cases were assigned to each service region during the previous contract?
- A. **1 Case was mediated in the Central Region (Merced)**  
**30 Cases were mediated in the Southern Region**  
**62 Cases were mediated in the Northern Region**
- Q. During the previous contract, how many training sessions were held in each service region and how many people attended?
- A. **None, thus far. We are currently planning a Training session in May. There are approximately 30 participants in attendance.**
- Q. What is the required duration of each training session?
- A. **The training session is approximately 36 - 40 hours.**
- Q. Who prepares the syllabus for training?
- A. **The Co-mediator training syllabus was prepared in collaboration with the SPB staff and a Consultant. The co-mediator training syllabus is complete, however, prior to the training it is reviewed for any improvement changes.**
- Q. What is the time framework once a case has been assigned to mediation?
- A. **Typically mediation can take an average of 16 calendar days. When the SEMP Office receives cases, it is typically faxed to the MSP within 24 hours. Once a case has been assigned to a MSP they must be able to respond to mediation requests within 48 hours and facilitate mediation within 2 weeks of case referral.**
- Q. What is the time framework once a training session has been requested?

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- A. **Training dates are selected in coordination with the MSP and then a meeting is scheduled 4-6 weeks prior to training to discuss improvements on an already established syllabus.**

The following documents were distributed and/or requested at the March 30, 2006 Bidders Conference:

1. History report (Please see the document below)
2. SEMP Mediation Model (Please see the document below)
3. SEMP Mediation Brochure (You can access this at the SPB website. Go to the "Office of the Chief Counsel" and it is under "Other")
4. Enlarged Mediation regions (Duplicate of map on page 14 of Mediation RFP)
5. Small Business Preference - please download this from the State Contracting Manual, Chapter 8, Section 8.21 through 8.30C, pages 111 through 116) at <http://www.documents.dgs.ca.gov/ols/scm/REV-10/CHAPTERS%207%20AND%208.pdf>

## **STATE EMPLOYEE MEDIATION PILOT PROGRAM**

Phase I of the State Employee Mediation Pilot Program ended in June 1997. This initial phase was developed by the State Personnel Board (Board) utilizing the services of the California Center for Public Dispute Resolution, a joint program of California State University, Sacramento and McGeorge School of Law, University of the Pacific. This phase accomplished the development of the basic mediation model and a training program for the training of the State's first group of volunteer mediators, as well as mediation of the first sixteen cases. A report of Phase I was issued in July 1997. (Appendix)

Phase II began on September 1, 1997. This phase utilized the services of a Special Consultant who had been involved with the initial phase of the pilot program. This second phase has had several additional goals which include: significantly increasing the number of completed mediations; developing additional mediation models in response to the increasing complexity of the cases referred to the program; refreshing and upgrading the skills of the current mediators; identifying and training additional mediators to reflect the diversity of the workforce; and developing criteria for the intake process which would better identify those cases suitable for mediation. This report focuses on Phase II of the Pilot Program.

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**SUMMARY OVERVIEW**

**Volume of Cases/Agreements Reached**

Fifty-six requests for mediation were referred to mediation between September 1, 1997 and July 30, 1998. Forty-two of those cases have been completed with an agreement between the parties. Eleven of the cases have been withdrawn, one was withdrawn and transferred to the Attorney General's Office at their request, and two are still pending a mediation session as of the time this report was prepared. Significantly, in every case that went to mediation, the parties reached an agreement. (See Attachment 1)

During Phase II, nearly three times the number of cases were mediated than during the first phase (42 vs. 16), with the rate of agreement improving from 87.5% to 100%. Eleven of the cases referred to mediation were withdrawn. This represents a withdrawal rate of 21% compared to 33% in the initial phase. Withdrawals were for reasons unrelated to mediation. Reasons included: illness, transfer, retirement, adverse action taken because the conflict escalated, or upper management intervened. (See Attachment 2)

**Expedited Processing**

In ten of the forty-one cases completed during Phase II, one or more of the disputants requested scheduling to be delayed due to personal or business reasons. The balance, thirty-one cases, were scheduled for the mediation to occur an average of 19.5 calendar days from intake. This average time has not been adjusted to reflect weekends or holidays. The time it takes to bring a dispute to mediation is significantly shorter than the time it takes to bring a dispute to hearing under existing adversarial procedures. Given the high cost and length of traditional complaint processes, the experience with mediation's high rates of written agreements and short time frames for scheduling and resolution, the mediation process represents a significant cost savings to the State.

**Two Party Mediations vs. Multiple Party Mediations**

Another significant development is an increase in the complexity of the mediations. The program was initially designed to handle the traditional two-person mediation, involving only two disputants and possibly their representatives. In Phase II, seventeen of the 41 completed cases (42%) involved only two disputants. Twenty-two mediations completed during Phase II (58%), however had multiple participants. Four of these included attorneys, and/or union representatives. One particularly complicated and lengthy mediation involved an offsite "team" of advisors, who were consulted by one of the parties after each mediation session. (Attachment 1)

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**Evaluations**

Disputant and mediator evaluations of the program remain very positive. An overwhelming majority of the evaluations returned indicated the parties would use the program again if the need arose and would recommend it to others. Not only has the Board received strong support and positive comments from the nine original departments that signed on as "participants" in the pilot, but the reputation of the program has generated an increasing number of inquiries about and/or requests for the program from non-participating departments. To date, 16 departments have referred one or more cases to the program. Relations with exclusive bargaining agents for the employees requesting participation in the program remain supportive.

**TYPES OF CASES MEDIATED**

**Interpersonal Disputes Between Parties or Among Multiple Parties**

Cases referred to mediation typically have an initial or presenting issue, which masks the "underlying" problem(s) which is (are) causing the conflict between the parties. The cases in both phases of this pilot program were true to form. Some of the typical presenting issues included communication problems, discrimination, sexual harassment, a lack of reasonable accommodation, and performance expectations. The balance of the cases can most generically be described as interpersonal disputes that has interfered significantly with the productivity of the disputants and, sometime, with that of the entire work unit.

During the past year, the cases have become more complex. The presenting issues are substantially the same but, as noted above, the number of individuals involved in the process has increased. The increased complexity of these multi-party mediations has required the development of additional mediation models, and additional advanced training for mediators.

The complexity of some of these mediations is exemplified by the following scenario, which presented itself in more than one of the multi-party mediations. In a number of their cases, the initial mediation identified fairly broad general communication problems among staff in an office, some of whom were not participants in the mediation at hand. The focus of the communication problem was on getting and giving criticism. There were more informal rules about what not to say (avoidance), than there were about understanding how to approach one another appropriately to discuss concerns and manage the conflict before it escalated out of control. A by-product of this informal "avoidance" model was the formation of "camps" of employees with loyalties to one side of the conflict or the other. The camps engaged in intra-office (or inter-office) conflict characterized by passive non-cooperation and exclusion. This exclusion was often so intense that the involved individuals would become ill, as evidenced by increased absenteeism and, in some cases, the filing of workers compensation claims. In some offices, the avoidance was so complete that some individuals would not speak to each other at all. If the camps involved more than one level in the organization, proxy wars

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would ensue. "Spying - tattling" would become common place. The various camps' "spin doctors" would take bits of a problem out of context, feed it into the camp(s)' gossip mill, and problems would escalate out of control. The trust level between the camps would become very low, further reducing cooperation and communication. The identification of the "camp" problem in mediation would sometimes lead to those involved agreeing that a follow up mediation with a larger group of people would be necessary. To respond to this identified need, a modified mediation-facilitation process was developed. The follow-up process is described as either the development of a "Code of Conduct" or "Rules of Engagement".

**Potential Adverse Action Cases**

Several of the cases involved issues that could have been addressed through adverse action. The issues that could have been handled by adverse action included issues of insubordination, inappropriate conduct, unsatisfactory performance, inefficiency, and harassment. In all completed mediation cases, the underlying issues continued to be the same as those identified in the first phase of the program. The most common issues included those of interpersonal communication, recognition, respect, trust, style, and role-performance expectations. The narrative in the July 28, 1997 "Contract End Report" describes each of these types of problems in some detail. (See Appendix pp.2-3)

**Discrimination/Reasonable Accommodation Cases**

Three cases involved issues of discrimination that had previously been filed in a formal or informal administrative complaint process or legal proceedings. One case involved an individual who was represented by an attorney and who had received a "right to sue letter" from the Department of Fair Employment and Housing. This very complicated mediation resulted in a resolution of all complaints. The agreement required the approval of the Board. The second case was well along in the Department's discrimination complaint process. It involved two levels of management and a third high level manager. The written agreement involved the department's Equal Employment Opportunity (EEO) staff in the implementation of the resolution. The third case involving discrimination was already the subject of a lawsuit, but the parties wanted to try mediation. After several sessions, the parties had significantly narrowed the scope of the issues. The case was ultimately transferred to the Attorney General's Office, at their request, for adjudication.

**NEW MEDIATION MODELS**

The mediation model developed for the first phase of the pilot continues to be the basic model used for the program. The use of "Mary's Ear", "Press Release", and "Press Conference" continue to be important elements in successful agreements and implementation strategies.  
(See Appendix, pp. 3-4)

Additional models have been developed that deal with the increased number of participants and the number of "sides" involved in the mediation.

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**Dissolution Model**

The number of mediations wherein the parties want to "end", rather than "continue" the relationship has increased. In the Dissolution Model case, the presenting issues are often all the parties want to discuss. These mediations typically focus on finding mutually agreeable language for the written agreement, rather than finding new behavior that will better manage the conflict between the parties. Such mediations often require shorter multiple sessions to work on language. Often much of this work can be done by phone or fax. In these mediations, there are often third party representatives involved.

**Expectations Model**

A new model for three (or more) "sides" has been developed and successfully implemented. In this model, there is usually more than one level of the organization involved. The highest level involved in the mediation usually sees the problem as continuing conflict between or among subordinates. Often, this "authority" person has in some way contributed to the conflict, but is unable to recognize their role in the problem. The model has the same structure as the basic model however, in the problem solving stage, the "authority" sets out expectations for all sides to hear and discuss. The clarification of expectations by the "boss" or "team leader" sets the context for the participating employees to work out new behaviors. The development of this new agreed-to behavior in the presence of the "boss" or "team leader" creates a common understanding and set of expectations among all parties to the dispute and between levels of the organization. Since all parties and levels have been involved in the development of the expected behavior and have signed the confidential agreement memorializing the understanding, they are better equipped to come together as a group and handle similar issues should any arise in the future. This group discussion approach helps to keep problems at a lower level of intensity, and avoids problems endemic to conflict resolution models where the parties are kept separated by design.

The Current Expectations Model usually identifies what appears to be a common underlying issue in nearly all mediations: the parties in the room have arrived there as a result of larger problems of communication and conflict management in their office or department. Oftentimes, the mediation may precipitate an interest in involving other employees in a facilitated discussion of some of the issues that surfaced during the mediation. The new mediation facilitation process called "Code of Conduct" or "Rules of Engagement" has been developed to address this situation.

**Rules of Engagement / Code of Conduct**

The Rules of Engagement/The Code of Conduct has two components. The first is a 90-minute didactic component, which describes the stages of conflict and certain concepts on how individuals develop their style of conflict management. The second is a facilitated discussion of three questions focusing on that group's preferred approach to conflict management. Each "code" is unique to the participants' workplace. This "code" clarifies the group's norms for problem solving, and establishes role expectations among

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levels of the organization as conflict is managed and concerns addressed. Feedback to date indicates that this process is well received and effective.

**MEDIATOR TRAINING**

During the past eleven months, those volunteers who have evidenced an interest in maintaining their skills were invited to one general discussion of the program and one two-day advanced training program. The evaluations of the sessions were very good.

Of the original 24 individuals who were trained as mediators, twelve remain active. In addition, two additional state employees, who were trained by the consultant in the State Employee Mediation Program process, were added to the program. This brought the total number of active volunteer mediators to 14. This is too small a number to adequately meet the needs of this growing program. Additional mediator training will be scheduled for this Fall.

**CHANGES IN THE LAW**

In January 1998, the laws regarding mediation were reorganized and slightly modified by AB 939. These modifications are reflected in the revised "Confidentiality Statement". (See Attachment 3)

**PLANNED PROGRAM ACTIVITIES**

In June, representatives of the Board met with the consultant to identify activities to be accomplished during the next several months. These include the following:

- September... Hold another information-marketing session at the Board. Use the session as a recruiting tool for the mediator training. Invite union officials to the session.  
Train an additional group of mediators. The attendees may be selected from three different subgroups. Influential managers, Human Resources, and Equal Employment Opportunity staff, and those destined to be "the mediators". An effort will be made to train union representatives as mediators.
- November... Additional training sessions focusing on new mediation models and the "Rules of Engagement" will be held for current volunteer mediators. Those experienced mediators will also be involved with the training of new volunteers, as appropriate. Use trainees to schedule marketing sessions in their departments. A training session for new mediators is also scheduled for mid-November.
- January '99... Major marketing effort at "transition time".

**SUGGESTED PROGRAM MODIFICATIONS**

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1. Through the training scheduled to occur early in the fall, the ranks of volunteer mediators should be expanded to include individuals in a wide range of classifications and with a variety of experiences (e.g. personnel, equal employment opportunity and reasonable accommodation). Union participation is also desired.
2. Marketing of the program to non-participating departments should be undertaken as the program becomes regularized.
3. Additional marketing to all departments to encourage consideration of mediation as a means of resolving merit issue complaints, reasonable accommodation requests, and medical issues in appropriate cases.
4. Review the program and pursue regular funding to support and institutionalize the pilot program.

## **VOLUNTEER MEDIATOR REFRESHER TRAINING**

### **SEMP MODEL**

Mediation practitioners describe the mediation process in many different ways. As you work in the field, you will hear the basic process explained in terms of steps, or in stages. This variation in numbering typically is related to how inclusively the process is being described to a person reading about the entire administrative process, including events outside of the view of the mediator, or the participants. The model you will learn is described in terms of "four stages". These stages are the four separate sets of actions for which you will be responsible. In each stage, you will utilize a specific set of "process skills" that will assist the participants to fashion their own agreement. The stages and your responsibilities are as follows:

#### **Stage I**

The mediators establish the climate, get agreement on ground rules, explain confidentiality, and utilize the process to elicit information from the parties. The intent is for the mediators to help the parties fully explain their issues and interests, and gain an understanding of the other party's issues and interests.

#### **Stage II**

When the parties have completed their respective stories, the mediators call a break, and ask the parties to leave the room. During this "break" the mediators develop a set of discussion questions that will be used by the mediators in Stage III. These questions reflect the presenting and underlying issues surfaced in Stage I.

#### **Stage III**

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This stage focuses on helping the parties identify "common ground" for the development of a (written) agreement. Collaborative problem solving is stressed and "win-win" outcomes typically emerge. The mediators not only process the discussion, but also act as scribe, writing down the literal words of the parties as agreements are reached.

**Stage IV**

Once there is an agreement between the parties, the mediators work with them, suggesting three additional elements for possible inclusion in their agreement. These three elements focus on successful implementation strategies.

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The above four stages are typically the stages volunteer mediators will experience. There are however, additional activities that need to take place to get the parties together in the room for the actual mediation. These include screening by the referring agency, referral to the Board, a telephone intake with the parties and occasional post mediation activities necessary to implement the agreement.